



Legal Document

Superior Court of California, County of San Francisco
Case No. CGC 13 534023
Rex Tabora Et Al v. Twenty Two Holdings, Llc Et Al

Document 3



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**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO**

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GENERAL DENIAL

REX TABORA et al VS. TWENTY TWO HOLDINGS, LLC et al

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8 Jeff Soo Hoo, Kent Heinzman, Sandra Heinzman,
9 Edsel Palma, Enrique Malvar and Toby Osako

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF SAN FRANCISCO
11 UNLIMITED JURISDICTION
12

13 REX TABORA, MINERVA ESHABARR
14 AND CHRISTINE MARDIGRAS,

15 Plaintiff,

16 vs.

17 TWENTY TWO HOLDINGS, LLC; BILLY
18 CHAN; SUSIE PHAM; PHUONG PHAM;
19 JEFF SOO HOO; KENT HEINZMAN;
20 SANDRA HEINZMAN; EDESEL PALMA;
21 ED BERNARDO, ENRIQUE MALVAR;
22 TOBY OSAKO; RENE ACOSTA; and
23 DOES 1 TO 20,

24 Defendant.

Case No. CGC-13-534023

**DEFENDANTS TWENTY TWO
HOLDINGS, LLC'S, BILLY CHAN'S,
SUSIE PHAM'S, PHUONG PHAM'S,
JEFF SOO HOO'S, KENT HEINZMAN'S;
SANDRA HEINZMAN'S, EDESEL
PALMA'S, ENRIQUE MALVAR'S AND
TOBY OSAKO'S GENERAL DENIAL TO
PLAINTIFFS' COMPLAINT**

Trial Date: None Set

25 Defendants Twenty Two Holdings, LLC, Billy Chan, Susie Pham, Phuong Pham, Jeff Soo
26 Hoo, Kent Heinzman, Sandra Heinzman, Edsel Palma, Enrique Malvar and Toby Osako (the
27 "DEFENDANTS") answers the Complaint for Involuntary Dissolution of Limited Liability
28 Company; Fraudulent Misrepresentation, Breach of Fiduciary Duty and Unreasonable Partial
Termination Of Members Interest In Violation Of Corp. Code 17100 (the "Complaint") filed by
plaintiffs Rex Tabora, Minerva Eshabarr and Christine Mardigras ("PLAINTIFFS") as follows:

FILED
San Francisco County Superior Court

NOV 12 2013

CLERK OF THE COURT

BY: [Signature] Deputy Clerk

CGC-13-534023
FAXED

1 In reliance on Code of Civil Procedure section 431.30, subdivision (d), DEFENDANTS
2 generally deny the unverified Complaint and each cause of action therein. DEFENDANTS deny
3 generally and specifically each and every allegation thereof, and deny PLAINTIFFS have been
4 damaged in any way by reason of any acts or omissions of the DEFENDANTS.

5 DEFENDANTS allege the following separate and distinct affirmative defenses to the
6 Complaint:

7 **First Affirmative Defense to All Causes of Action**

8 **(Waiver)**

9 The Complaint, and each and every cause of action contained therein, was waived by
10 PLAINTIFFS.

11 **Second Affirmative Defense to All Causes of Action**

12 **(Estoppel)**

13 The Complaint, and each and every cause of action contained therein, is barred by the
14 doctrine of estoppel.

15 **Third Affirmative Defense to All Causes of Action**

16 **(Unclean Hands)**

17 The Complaint, and each and every cause of action contained therein, is barred by the
18 doctrine of unclean hands.

19 **Fourth Affirmative Defense to All Causes of Action**

20 **(Negligent, Intentional or Bad Faith Conduct)**

21 The Complaint, and each and every cause of action contained therein, is barred by
22 PLAINTIFFS' negligent, intentional or bad faith conduct.

23 **Fifth Affirmative Defense to All Causes of Action**

24 **(Corporations Code Section 17351(b)(1))**

25 DEFENDANTS seek to invoke the protections of California Corporations Code Section
26 17351(b)(1) and avoid dissolution by purchasing the current membership interests of
27 PLAINTIFFS (after dilution) at their fair market value. In fixing the fair market value,
28 DEFENDANTS further seek to deduct all damages resulting from PLAINTIFFS' breaches.

1 **Sixth Affirmative Defense to All Causes of Action**

2 **(Failure to Exhaust Remedies)**

3 The Complaint, and each and every cause of action contained therein, is barred because
4 PLAINTIFFS have failed to exhaust its remedies.

5 **Seventh Affirmative Defense to All Causes of Action**

6 **(PLAINTIFFS Not Entitled to Dissolution)**

7 The Complaint, and each and every cause of action contained therein, is barred because
8 PLAINTIFFS are not entitled to Dissolution as requested, pursuant to the operating agreement of
9 Twenty Two Holdings, LLC.

10 **Eighth Affirmative Defense to All Causes of Action**

11 **(Failure To State A Cause Of Action)**

12 The Complaint fails to state facts sufficient to constitute a cause of action for relief against
13 DEFENDANTS upon which relief may be granted.

14 **Ninth Affirmative Defense to All Causes of Action**

15 **(Offset)**

16 DEFENDANTS possess rights of offset against PLAINTIFFS and, accordingly, any
17 recovery by PLAINTIFFS must be barred or reduced by the amount of such offset(s).

18 **Tenth Affirmative Defense to All Causes of Action**

19 **(Lack of Causation)**

20 DEFENDANTS' conduct was not the cause in fact or the proximate cause of any of the
21 damages alleged by PLAINTIFFS, and PLAINTIFFS' claims against DEFENDANTS are barred
22 and precluded as a result thereof.

23 **Eleventh Affirmative Defense to All Causes of Action**

24 **(Performance Excused)**

25 To the extent that PLAINTIFFS have alleged relief based upon DEFENDANTS' failure to
26 perform, PLAINTIFFS are not entitled to relief because DEFENDANTS' performance, if any, has
27 been excused in whole or in part by PLAINTIFFS' own conduct or omissions.

1 **Twelfth Affirmative Defense to All Causes of Action**

2 **(Consent)**

3 PLAINTIFFS consented to and approved all of the acts and omissions about which they
4 now complains. Accordingly, PLAINTIFFS are barred from pursuing the Complaint.

5 **Thirteenth Affirmative Defense to All Causes of Action**

6 **(Statute of Limitations)**

7 Each of PLAINTIFFS' claims for relief is timed-barred by the statutes of limitations
8 applicable to those claims.

9 **Fourteenth Affirmative Defense to All Causes of Action**

10 **(Laches)**

11 PLAINTIFFS' Complaint is barred by the doctrine of laches.

12 **Fifteenth Affirmative Defense to All Causes of Action**

13 **(Discharge of Obligations)**

14
15 PLAINTIFFS' Complaint is barred because DEFENDANTS have complied with and fully
16 performed all past and current obligations imposed upon them by law, contracts, or equity, and all
17 past and current obligations owed to PLAINTIFFS have been satisfied, released, or otherwise
18 discharged.

19 **Sixteenth Affirmative Defense to All Causes of Action**

20 **(Failure To Mitigate)**

21 PLAINTIFFS' Complaint is barred, in whole or in part, to the extent PLAINTIFFS have
22 failed to mitigate their damages, if any.

23 **Seventeenth Affirmative Defense to All Causes of Action**

24 **(Superseding Causes)**

25
26 If PLAINTIFFS have sustained any damage or loss, such damage or loss was the result of
27 intervening or superseding events, factors, occurrences or conditions that were in no way caused
28 by DEFENDANTS, and for which DEFENDANTS are not responsible and/or liable.

1 **Eighteenth Affirmative Defense to All Causes of Action**

2 **(Good Faith)**

3 PLAINTIFFS' Complaint is barred because the alleged conduct of DEFENDANTS was
4 not unfair and was undertaken in good faith and in a manner reasonably believed to be necessary
5 and appropriate in connection with the ordinary and proper conduct of the businesses of the
6 underlying projects.

7 **Nineteenth Affirmative Defense to All Causes of Action**

8 **(Justification)**

9
10 PLAINTIFFS' Complaint is barred because any act or omission of DEFENDANTS was
11 justified.

12 **Twentieth Affirmative Defense to All Causes of Action**

13 **(No Damages)**

14 PLAINTIFFS have not suffered any damages or injury as a result of any act of
15 DEFENDANTS.

16 **Twenty-First Affirmative Defense to All Causes of Action**

17 **(Failure to Allege With Particularity)**

18 PLAINTIFFS have failed to allege their claims for relief against DEFENDANTS with the
19 particularity and certainty required by law, and thus are precluded in whole or in part from
20 recovering on such claims for relief.

21 **Twenty-Second Affirmative Defense to All Causes of Action**

22 **(Fault of Others)**

23 PLAINTIFFS alleged damages, if any, were caused in whole or in part, by persons other
24 than PLAINTIFFS.

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1 **Twenty-Third Affirmative Defense to All Causes of Action**

2 **(Intervening Cause)**

3 If PLAINTIFFS have suffered any damages as alleged in the Complaint, upon information
4 and belief, such damages were caused in whole or in part through the operation of intervening
5 causes.

6 **Right to Amend**

7 DEFENDANTS reserve the right to amend this Answer to add additional
8 affirmative defenses as new facts are discovered.

9
10 WHEREFORE the DEFENDANTS pray for judgment in their favor and against
11 PLAINTIFFS as follows:

- 12 1. that PLAINTIFFS take nothing by way of their Complaint;
13 2. that the Court deny PLAINTIFFS the declarations/decrees sought in the Complaint;
14 3. for costs of suit;
15 4. for attorneys' fees;
16 5. for general relief; and
17 6. for such other and further relief as the Court may deem proper.

18
19 DATED: November 12, 2013

BROWNE GEORGE ROSS LLP

Andrew A August

Kevin F. Rooney

20
21
22 By



Kevin F. Rooney

Attorneys for Twenty Two Holdings, LLC,
Billy Chan, Susie Pham, Phuong Pham,
Jeff Soo Hoo, Kent Heinzman,
Sandra Heinzman, Edsel Palma,
Enrique Malvar and Tobv Osako

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF SAN FRANCISCO

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of San Francisco, State of California. My business address is 121 Spear Street, Suite 200, San Francisco, CA 94105.

On November 12, 2013, I served true copies of the following document(s) described as **DEFENDANTS TWENTY TWO HOLDINGS, LLC'S, BILLY CHAN'S, SUSIE PHAM'S, PHUONG PHAM'S, JEFF SOO HOO'S, KENT HEINZMAN'S; SANDRA HEINZMAN'S, EDESEL PALMA'S, ENRIQUE MALVAR'S AND TOBY OSAKO'S GENERAL DENIAL TO PLAINTIFFS' COMPLAINT** on the interested parties in this action as follows:


SERVICE LIST

Arthur C. Lipton, Esq.
Jonathan L. Piper, Esq.
Lipton & Piper, LLP
Flood Blooding – Suite 945
870 Market Street
San Francisco, CA 94102

BY MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with Browne George Ross LLP's practice for collecting and processing correspondence for mailing. On the same day that the correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on November 12, 2013, at San Francisco, California.


Heather Pruitt